City of Lafayette Staff Report

For:	City Council
By:	Christine Sinnette, Senior Planner
Date Written:	March 12, 2009
Meeting Date:	March 23, 2009
Subject:	Agreement for Installation and Maintenance of Existing and New Landscaping between Temple Isaiah of CCC and the City of Lafayette, located at 3800 Mt. Diablo Boulevard, APN 241-010-046.

Introduction

The attached Agreement for Installation and Maintenance of Existing and New Landscaping between Temple Isaiah of CCC and the City of Lafayette is a condition of approval for L01-07. The attached agreement meets the requirement for approval.

Fiscal Impact

None.

Recommendation

Accept Agreement for Installation and Maintenance of Existing and New Landscaping and authorize the City Clerk to accept and record.

Attachment

1. Agreement for Installation and Maintenance of Existing and New Landscaping

Record at the request of City of Lafayette
Return to:
City of Lafayette/cs
3675 Mt. Diablo Boulevard
Lafayette, CA 94549

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING AND NEW LANDSCAPING

THIS AGREEMENT is made this _____ day of _____, 2009, between Temple Isaiah of CCC hereafter referred to as "Property Owner," and the CITY OF LAFAYETTE, a Municipal Corporation, hereafter referred to as "City."

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the City of Lafayette, 3800 Mt. Diablo Boulevard, (Assessor's Parcel Number 241-010-046 described in Exhibit "A" attached to this Agreement and made a part of it by this reference.

2. On December 6, 2007, the City granted a Land Use Permit (L01-07), a Hillside Development Permit (HDP06-07), and a Variance (V12-07) to the Property Owner in accordance with the zoning ordinance of the City of Lafayette.

3. By the terms of these development approvals, the Property Owner is required to install and maintain landscaping in accordance with a plan approved by the City on February 23, 2009, a copy of which is on file in the City Office to which reference is made for further particulars.

4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the property, and is necessary to carry out the purpose and intent of the City's land use regulations, and that the development would not have been approved by City without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE. The purpose of this Agreement is to assure (a) installation of the landscaping in accordance with the landscape plan approved by the City and (b) continued maintenance and care of the existing landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference.

3.

4. CITY PROCEEDINGS. Reference is made to the Land Use Permit (L01-07), Hillside Development Permit (HDP06-07), and Variance (V12-07) proceedings conducted by the City and the landscaping plan for the property, a copy of which is on file in the City Offices.

5. LANDSCAPING AS A BENEFIT. Property Owner agrees that the landscaping he/she is obligated to provide will materially benefit his/her property and is necessary to comply with conditions of approval #32 and #40 of L01-07 imposed by the City as a requirement of the development of the property.

6. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. Property Owner agrees to complete the installation of the approved landscaping prior to final building inspection approval, and diligently to maintain and care for the landscaping which he/she installs, using generally accepted methods of cultivation and watering. Property Owner shall maintain that standard care necessary to prevent the landscaping from deteriorating to the extent that its value as landscaping is destroyed.

7. CITY MAY MAINTAIN LANDSCAPING. Property Owner agrees that if he/she fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition, the City will give written notice of the deficiency to the owner who shall have 20 days to make the necessary correction. If the correction is not made within 20 days, the City may elect to take the steps necessary to assure that the landscaping is maintained and cared for. To do this, the City shall service a notice of its intent to enter the premises for this purpose. The City shall either personally serve the notice upon the Property Owner or mail a copy of it by Certified Mail to the Property Owner's last known address, or as shown on the tax rolls, at least 15 days in advance of the date when it intends to enter the premises. For this purpose, the City may enter upon the property and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. The City may act either through its own employees or through an independent contractor.

8. CITY'S COSTS OF MAINTENANCE A LIEN. If the City incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the City shall make demand on the Property Owner for payment. If the Property Owner fails to pay the costs incurred by the City within 30 days of the date demand was made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of seven percent a year until paid.

9. ADDITIONAL REMEDIES. The City may as an alternative to the lien procedure set forth above in Paragraph 7, bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, the Property Owner agrees to pay the City a reasonable sum as attorney's fees and court costs, together with interest from the date which is 30 days after the City has given its notice, under Paragraph 6 above.

10. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed to the Planning and Building Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549. Notices to the Property Owner shall be addressed to him/her at the following address:

Temple Isaiah of CCC
3800 Mt. Diablo Boulevard
Lafayette, CA 94549

When Property Owner ceases to be the owner, he/she may file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so, the subsequent Grantee is charged with the obligation under this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:

(a) If any provision of this contract is adjudged invalid, the remaining provisions of it are not affected.
(b) Notice to Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
(c) This writing contains a full, final and exclusive statement of the contract of the parties.
(d) Property Owner appoints the City as his/her Attorney-in-fact, to do all acts and things which the City considers necessary to restore or maintain the landscaping approved under the Land Use Permit (L01-07), Hillside Development Permit (HDP06-07), and Variance (V12-07) proceedings.
(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
(f) The obligations upon the owner signing this Agreement terminates personally as to him/her when he/she conveys his/her interest in the property and files for record with the County Recorder a copy of assignment of this Agreement. In this case, the new owner(s) takes title subject to the requirements of this agreement.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. CITY MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the City considers that it is necessary to have the Property Owner post additional security to guarantee the performance of his/her obligations, the City may require the Property Owner to post additional security. The City may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the City. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the City may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETE:

_____

Mayor, City of Lafayette

ATTEST:

_____

City Clerk

PROPERTY OWNER(S):

3/6/09

President, Temple Isaiah PAUL J MENAKER

3/6/09 MICHAEL LIEPMAN

Executive Director, Temple Isaiah

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet.

ATTACHMENTS: Exhibit "A" Legal Description

ALL-PURPOSE ACKNOWLEDGMENT FOR CALIFORNIA

STATE OF CALIFORNIA
COUNTY OF Contra Costa Co.

On MARCH 06, 2009 (Date), before me, KAZIE K. AFSARI Notary Public (Name And Title Of Officer (e.g. "Jane Doe, Notary Public")),

personally appeared Paul Julian MENKER, Michael LIEPMAN (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

KAZIE KHOSHNOUD AFSARI
COMM. #1675279
NOTARY PUBLIC • CALIFORNIA
CONTRA COSTA COUNTY
Comm. Exp. JULY 13, 2010

Place Notary Seal Above

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☑ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☐ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)
Paul Julian Menker

DESCRIPTION OF ATTACHED DOCUMENT

Stormwaters' Landscape agreement
Title or Type of Document

13
Number Of Pages

MARCH 06, 2009
Date Of Document

Michael Liepman
Signer(s) Other Than Named Above

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

EXHIBIT A
Legal description

The property described as follows:

Real property in the City of Lafayette, County of Contra Costa, State of California, described as follows:

PARCEL ONE:

Portion of the Rancho Acalanes, described as follows:

Beginning on the West line of the parcel of land described in the Deed from Walter Arnstein, et ux, to Annie E. Burton, dated August 11, 1924 and recorded August 14, 1924, in Volume 472 of Deeds, at Page 405, at the extension North 45° 22' East of the North line of the 2.997 acre tract described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 30, 1926, and recorded September 13, 1926, in Volume 62 of Official Records, at Page 5; thence from said point of beginning, South 45° 22' West along said extended line to the northeast corner of said 2.997 acre parcel; thence along the North line of said 2.997 acre parcel (62 OR 5) as follows:

South 45° 22' West, 75.98 feet; southwesterly along the arc of a curve to the left, with a radius of 703 feet, 107.05 feet; South 44° 40' West, 4.44 feet; and westerly along the arc of a curve to the right with a radius of 347.5 feet, to the East line of the 1.992 acre tract of land described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 23, 1926, and recorded September 13, 1926, in Volume 48 of Official Records, at Page 459; thence North along the East line of said 1.992 acre tract to the northeast corner thereof; thence West along the North line of said 1.992 acre tract 183.57 feet to the northwest corner thereof; thence South along the West line of said 1.992 acre tract to the 2.997 acre tract above referred to (62 OR 5); thence westerly along the North line of said tract, along the arc of a curve to the right, with a radius of 729.5 feet, to the East line of the 9.444 acre tract described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 23, 1926, and recorded September 13, 1926, in Volume 48 of Official Records, at Page 459; thence North along the East line of said tract (48 OR 459) to the South line of the parcel of land described in the Deed from Walter Arnstein, et ux, to J. B. Guisto, dated January 29, 1925, and recorded February 18, 1925, in Volume 478 of Deeds at Page 491; thence East along the South line of said Guisto Tract (478 D 491) 556.39 feet to a point due North of the northwest corner of the parcel of land described in the Deed from Walter Arnstein, et ux, to Annie E. Burton, dated June 4, 1925 and recorded July 23, 1925 in Volume 5 of Official Records, at Page 21; thence South 591.40 feet to the northwest corner of said Burton Tract (5 OR 21); thence South 10° East along the West line of said Burton Tract (5 OR 21) and the West line of the Burton Tract above referred to (472 D 405) 225 feet; thence South 38° 30' East along the West line of said Burton Tract (472 D 405), to the point of beginning.

EXCEPTING FROM PARCEL ONE:

1. That portion thereof conveyed to John K. Waite, et ux, by Deed recorded February 19, 1946 in Book 884, Page 285, Official Records.

2. That portion thereof conveyed to the State of California by Deed recorded July 22, 1955, Book 2577, Page 163, Official Records.

3. That portion thereof conveyed to East Bay Municipal Utility District by Deed recorded December 22, 1964, Book 4768, Page 620, Official Records.

PARCEL TWO:

Portion of the Rancho Acalanes, described as follows:

Beginning at the northwest corner of the 1.992 acre tract described as Parcel Two in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 23, 1926, and recorded September 13, 1926, in Volume 48 of Official Records at Page 459; thence from said point of beginning, East 183.57 feet; thence South 336.75 feet to a point which bears North 130.15 feet from the southeast corner of said 1.992 acre tract described in Volume 48 of Official Records at Page 459; thence South 79° 37' 29" West, 186.62 feet to a point on the West line of said 1.992 acre tract, which said point bears North 108.20 feet from the southwest corner of said 1.992 acre tract; thence North 370.36 feet to the point of beginning.

PARCEL THREE:

Portion of the Rancho Acalanes, described as follows:

That parcel of land bounded on the North by the South line of the 2.997 acre parcel of land described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District dated August 30, 1926, and recorded September 13, 1926, in Volume 62 of Official Records, at Page 5 on the South by the North line of the Old County Road between Lafayette and Oakland, as said North line existed in 1924, and by the North line of the State Highway between Lafayette and Oakland, on the West by the East line of the 1.992 acre parcel of land described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 23, 1926 and recorded September 13, 1926 in Volume 48 of Official Records, at Page 459.

EXCEPTING FROM PARCEL THREE:

Any portion thereof lying within the parcel of land described in the judgment quieting title recorded April 24, 1989, Book 15021, Page 100, Official Records, and amended by Instrument recorded May 25, 1989, Book 15091, Page 580, Official Records.

PARCEL FOUR:

Portion of the Rancho Acalanes, described as follows:

Beginning on the North line of the Old County Road between Lafayette and Oakland, at the West line of the parcel of land described in the Deed from Walter Arnstein, et ux, to Annie E. Burton, dated August 11, 1924, in Volume 472 of Deeds, at Page 405; thence from said point of beginning, South 45° 55' West along said North line to the most easterly corner of the 2.997 acre parcel of land described in the deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 30, 1926, and recorded September 13, 1926, in Volume 62 of Official Records at Page 5; thence North 38° 30' West along the northeast line of said 2.997 acre parcel; thence North 45° 22' East to the West line of said Burton Parcel (472 D 405); thence South 38° 30' East along said line to the point of beginning.

PARCEL FIVE:

A portion of that parcel of land described in the Final Order of Condemnation, recorded December 7, 1955, in Volume 2666, Page 339, Official Records of Contra Costa County, said

portion being more particularly described as follows:

Commencing at the easterly terminus of that course described as "N. 85° 04' 55" E., 118.48 feet" in Parcel 1 of Deed No. 5132 to State of California, recorded July 22, 1955, in Volume 2577, Page 163, Official Records of Contra Costa County; thence along the easterly prolongation of said course, North 85° 04' 36" East 98.90 feet; thence South 81° 44' 19" East, 117.89 feet to the southerly line of said parcel (2666 OR 339); thence along last said line and along the westerly line of said parcel (2666 OR 339) North 89° 17' 54" West, 215.27 feet and North 0° 37' 45" East, 5.82 feet to the point of commencement.

The bearings and distances used in the above description for Parcel Six are on the California Coordinate System, Zone 3. Multiply the above distances by 1.0000880 to obtain ground level distances.

PARCEL SIX:

A portion of that certain parcel of land granted to East Bay Municipal Utility District, by Deed recorded July 23, 1925, in Book 48 of Official Records, at Page 459, in the Office of the County Recorder of Contra Costa County, more particularly described as follows:

Commencing at the northern line of the 2.977 acre parcel of land, described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District recorded September 13, 1926, in Volume 62 of Official Records, at Page 5, at the West line of the parcel of land described as Parcel One in the Deed from John Costello, Trustee, to Contra Costa Jewish Community Center, recorded March 8, 1954 in Volume 2280 of Official Records, at Page 468;

thence, from said point of commencement, along said western line, North 00° 15' 16" East 66.61 feet to the point of beginning for this description;

thence, from said point of beginning, leaving said western line, North 60° 19' 33" West 89.14 feet;

thence, North 09° 49' 54" West 29.93 feet;

thence, North 06° 37' 20" East 48.70 feet;

thence, North 29° 00' 31" West 142.28 feet;

thence, North 06° 42' 44" West 58.22 feet;

thence, North 42° 52' 12" East 114.47 feet;

thence, North 19° 58' 45" West 106.46 feet;

thence, North 15° 29' 45" East 24.09 feet;

thence, North 39° 17' 12" East 97.35 feet;

thence, South 79° 36' 19" East 46.49 feet to a point on said western line of said Parcel One (2280 OR 468);

thence, along said western line, South 00° 15' 16" West 578.38 feet to said point of beginning.

PARCEL SEVEN:

"An easement for the construction, reconstruction, maintenance, removal and use of twenty (20) foot wide roadway and a 12 inch diameter storm drain" as conveyed to Temple Isaiah of Contra Costa County by Instrument recorded January 15, 1999, Series No. 99-12455, Official Records, described as follows:

A portion of that certain parcel of land granted to East Bay Municipal Utility District, by Deed recorded July 23, 1925, in Book 48 of Official Records, at Page 459, in the Office of the County Recorder of Contra Costa County, and other properties owned by East Bay Municipal Utility District, more particularly described as follows:

Commencing at a point on the eastern line of said parcel of land, said point being the southwestern corner of that certain parcel of land described in the Deed recorded December 22, 1964, in Book 4768 of Official Records, at Page 620, in said Office of the County Recorder of Contra Costa County;

thence, from said point of commencement, along said eastern line, North 00° 15' 16" East 66.61 feet;

thence, leaving said eastern line, North 60° 19' 33" West 14.14 feet to the point of beginning for this description.;

thence, from said point of beginning, North 60° 19' 33" West 20.15 feet;

thence, along the arc of a non-tangent 105.23 foot radius curve to the right, from which the center of said curve bears North 67° 57' 41" West, through a central angle of 11° 19' 47", an arc distance of 20.81 feet;

thence, South 33° 22' 15" West 113.93 feet;

thence, along the arc of a tangent 60.00 foot radius curve to the left, through a central angle of 83° 05' 22", an arc distance of 87.01 feet;

thence, South 49° 43' 07" East 74.92 feet;

thence, along the arc of a tangent 9.00 foot radius curve to the right, through a central angle of 21° 40' 30", an arc distance of 3.40 feet to a point on the northern line of Mt. Diablo Boulevard, as it now exists;

thence, along said northern line, along the arc of a non-tangent 1,950.00 foot radius curve to the left, from which the center of said curve bears North 06° 50' 39" East, through a central angle of 01' 33' 19", an arc distance of 52.94 feet;

thence, leaving said northern line, North 37° 45' 47" West 35.89 feet;

thence, North 85° 19' 36" West 21.58 feet;

thence, North 49° 43' 07" West 69.85 feet;

thence, along the arc of a tangent 40.00 foot radius curve to the right, through a central angle of 83° 05' 22", an arc distance of 58.01 feet;

thence, North 33° 22' 15" East 109.90 feet;

thence, along the arc of a tangent 125.23 foot radius curve to the left, through a central angle of 10° 06' 16", an arc distance of 22.09 feet to said point of beginning.

PARCEL EIGHT:

"An easement for the construction, reconstruction, maintenance, removal and use of a 12 inch diameter storm drain" as conveyed to Temple Isaiah of Contra Costa County by Instrument recorded January 15, 1999, Series No. 99-12456, Official Records, described as follows:

PARCEL EIGHT-A:

A portion of that certain parcel of land granted to East Bay Municipal Utility District, by Deed recorded July 23, 1925, in Book 48 of Official Records, at Page 459, in the Office of the County Recorder of Contra Costa County, and other properties owned by East Bay Municipal Utility District, more particularly described as follows:

Commencing at a point on the eastern line of said parcel of land, said point being the southwestern corner of that certain parcel of land described in the Deed recorded December 22, 1964, in Book 4768 of Official Records, at Page 620, in said Office of the County Recorder of Contra Costa County;

thence, from said point of commencement, along said eastern line, North 00° 15' 16" East 66.61 feet;

thence, leaving said eastern line, North 60° 19' 33" West 14.14 feet;

thence, along the arc of a non-tangent 125.23 foot radius curve to the right, from which the center of said curve bears North 66° 44' 10" West, through a central angle of 10° 06' 16", an arc distance of 22.09 feet;

thence, South 33° 22' 15" West 20.03 feet to the point of beginning for this description;

thence, from said point of beginning, South 33° 22' 15" West 89.87 feet;

thence, along the arc of a tangent 40.00 foot radius curve to the left, through a central angle of 25° 27' 31", an arc distance of 17.77 feet;

thence, North 48° 55' 42" East 35.85 feet;

thence, North 33° 22' 15" East 32.21 feet;

thence, North 14° 51' 31" East 42.52 feet to said point of beginning.

PARCEL EIGHT-B

A portion of that certain parcel of land granted to East Bay Municipal Utility District, by Deed recorded July 23, 1925, in Book 48 of Official Records, at Page 459, in the Office of the County Recorder of Contra Costa County, and other properties owned by East Bay Municipal Utility District, more particularly described as follows:

Commencing at a point on the eastern line of said parcel of land, said point being the southwestern corner of that certain parcel of land described in the Deed recorded December 22, 1964, in Book 4768 of Official Records, at Page 620, in said Office of the County Recorder of Contra Costa County;

thence, from said point of commencement, along said eastern line, North 00° 15' 16" East 66.61 feet;

thence, leaving said eastern line, North 60° 19' 33" West 34.29 feet;

thence, along the arc of a non-tangent 105.23 foot radius curve to the right, from which the center of said curve bears North 67° 57' 41" West, through a central angle of 11° 19' 47", an arc distance of 20.81 feet;

thence, South 33° 22' 15" West 113.93 feet;

thence, along the arc of a tangent 60.00 foot radius curve to the left, through a central angle of 29° 39' 53", an arc distance of 31.06 feet to the point of beginning for this description.;

thence, from said point of beginning, continuing along said 60.00 foot radius curve to the left, from which the center of said curve bears North 37° 28' 49" East, through a central angle of 13° 22' 36", an arc distance of 14.01 feet;

thence, South 48° 55' 42" West 97.60 feet to a point on the northern line of Mount Diablo Boulevard as it exists today;

thence, along said northern line, along the arc of a non-tangent 1,950.00 foot radius curve to the right from which the center of said curve bears North 10° 41' 06" East, through a central angle of 00° 24' 37", an arc distance of 13.97 feet;

thence, leaving said northern line, North 48° 55' 42" East 114.82 feet to said point of beginning.

APN: 241-010-046 and 241-010-002